

Patent

11 MAR 2005

Attorney Docket No.072US1

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: **SYSTEMS AND METHODS FOR REMOVING BODY TISSUE.**

The specification of which is attached hereto.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). I also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or PCT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. § 1.63(e).

I hereby claim foreign priority benefits under 35 U.S.C. § 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 120 or 365(c) of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. § 1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

Application Number
PCT/US02/28926

Filing Date
September 11, 2002

Status
Pending

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

CUSTOMER NUMBER: 30,328

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct to the contrary.

Please direct all correspondence in this case to at the address indicated below:

**Nuvasive
c/o PortfolioIP
P.O. Box 52050
Minneapolis, MN 55402
Telephone No. 858-527-1936**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1 : **Chester M Sutterlin**

Citizenship: **United States of America**

Residence: **Gainesville, FL**

Post Office Address: **Spinal Health Centers
7120 NW 11th Place
Gainesville, FL 32605**

Signature: _____
Chester M Sutterlin

Date: _____

X Additional inventors are being named on separately numbered sheets, attached hereto.

Full Name of joint inventor number 2 : **Jason Blain**
Citizenship: **United States of America** Residence: **San Diego, CA**
Post Office Address: 11662 Corte Gueka
San Diego, CA 92128

Signature: _____ Date: _____
Jason Blain

Full Name of joint inventor number 3 : **Matthew Curran**
Citizenship: **United States of America** Residence: **San Diego, CA**
Post Office Address: 3218 Rancho Quartillo
10983 Caminito Arcada
San Diego, CA 92131

Signature: _____ Date: _____
Matthew Curran

Full Name of joint inventor number 4 : **Troy Woolley**
Citizenship: **United States of America** Residence: **San Diego, CA**
Post Office Address: 10983 Caminito Arcada
San Diego, CA 92131

Signature: _____ Date: _____
Troy Woolley

Full Name of joint inventor number 5 : **Eric Kovach**
Citizenship: **United States of America** Residence: **Carlsbad, CA**
Post Office Address: 3107 Quebrada Circle
Carlsbad, CA 92009

Signature: _____ Date: _____
Eric Kovach

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

Box No. VIII (iv) DECLARATION: INVENTORSHIP (only for the purposes of the designation of the United States of America)
The declaration must conform to the following standardized wording provided for in Section 214: see Notes to Boxes Nos. VIII, VIII (i) to (iv) (in general) and the specific Notes to Box No. VIII (iv). If this box is not used, this sheet should not be included in the request.

Declaration of Inventorship (Rules 4.17(iv) and 516x1(a)(iv))
for the purposes of the designation of the United States of America:

I hereby declare that I believe I am the original, first and sole (if only one inventor is listed below) or joint (if more than one inventor is listed below) inventor of the subject matter which is claimed and for which a patent is sought.

This declaration is directed to the international application of which it forms a part (if filing declaration with application).

This declaration is directed to international application No. PCT/US02/28926 (if furnishing declaration pursuant to Rule 26ter).

I hereby declare that my residence, mailing address, and citizenship are as stated next to my name.

I hereby state that I have reviewed and understand the contents of the above-identified international application, including the claims of said application. I have identified in the request of said application, in compliance with PCT Rule 4.10, any claim to foreign priority, and I have identified below, under the heading "Prior Applications," by application number, country or Member of the World Trade Organization, day, month and year of filing, any application for a patent or inventor's certificate filed in a country other than the United States of America, including any PCT international application designating at least one country other than the United States of America, having a filing date before that of the application on which foreign priority is claimed.

Prior Applications: US Provisional App. Ser. No. 60/322,489 filed Sept 10, 2001

I hereby acknowledge the duty to disclose information that is known by me to be material to patentability as defined by 37 C.F.R. § 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the PCT international filing date of the continuation-in-part application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name: Chester Sutherland

Residence: Gainesville, Florida US

(city and either US state, if applicable, or country)

Mailing Address: 7120 NW 11th Place

Gainesville, Florida 32605 US

Citizenship: US

Inventor's Signature: Chester E. Sutherland III
(if not contained in the request, or if declaration is corrected or added under Rule 26ter after the filing of the international application. The signature must be that of the inventor, not that of the agent)

Date: October 24, 2002

(of signature which is not contained in the request, or of the declaration that is corrected or added under Rule 26ter after the filing of the international application)

Name: Jason Blain

Residence: San Diego, California US

(city and either US state, if applicable, or country)

Mailing Address: 11662 Corte Guerra

San Diego, California 92128 US

Citizenship: US

Inventor's Signature: Jason Blain
(if not contained in the request, or if declaration is corrected or added under Rule 26ter after the filing of the international application. The signature must be that of the inventor, not that of the agent)

Date: October 24, 2002

(of signature which is not contained in the request, or of the declaration that is corrected or added under Rule 26ter after the filing of the international application)

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Name: Matthew Curran

Residence: Carlsbad, California US CA
(city and either US state, if applicable, or country)

Mailing Address: 3218 Rancho Quatillo
Carlsbad, California 92009 US

Citizenship: US

Inventor's Signature: Matthew Curran
(if not contained in the request, or if declaration is corrected or added under Rule 26ter after the filing of the international application. The signature must be that of the inventor, not that of the agent)

Date: October 24, 2002
(of signature which is not contained in the request, or of the declaration that is corrected or added under Rule 26ter after the filing of the international application)

Name: Troy Woolley

Residence: San Diego, California US CA
(city and either US state, if applicable, or country)

Mailing Address: 10983 Caminito Arcada
San Diego, California 92131 US

Citizenship: US

Inventor's Signature: Troy Woolley
(if not contained in the request, or if declaration is corrected or added under Rule 26ter after the filing of the international application. The signature must be that of the inventor, not that of the agent)

Date: October 24, 2002
(of signature which is not contained in the request, or of the declaration that is corrected or added under Rule 26ter after the filing of the international application)

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Name: **Eric Kovach**

Residence: **Carlsbad, California US CA**
(city and either US state, if applicable, or country)

Mailing Address: **3107 Quebeca Circle**
Carlsbad, California 92009 US

Citizenship: **US**

Inventor's Signature: **Eric Kovach** Date: **October 24, 2002**
(if not contained in the request, or if declaration is corrected or added under Rule 26ter after the filing of the international application. The signature must be that of the inventor, not that of the agent) (of signature which is not contained in the request, or of the declaration that is corrected or added under Rule 26ter after the filing of the international application)

Name:

Residence:
(city and either US state, if applicable, or country)

Mailing Address:

Citizenship:

Inventor's Signature: Date:
(if not contained in the request, or if declaration is corrected or added under Rule 26ter after the filing of the international application. The signature must be that of the inventor, not that of the agent) (of signature which is not contained in the request, or of the declaration that is corrected or added under Rule 26ter after the filing of the international application)

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